

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 08-01789

4 - - - - - x

5  
6 In the Matter of:

7  
8 SECURITIES INVESTOR PROTECTION CORPORATION

9 Plaintiff,

10 V.

11  
12 BERNARD MADOFF INVESTMENT SECURITIES, LLC. ET AL,

13  
14 Defendants,

15 - - - - - x

16 U.S. Bankruptcy Court

17 One Bowling Green

18 New York, New York

19  
20 August 29, 2012

21 10:03 AM

22  
23 B E F O R E:

24 HON BURTON LIFLAND

25 U.S. BANKRUPTCY JUDGE

1 TRIAL RE: 08-01789-brl Securities Investor Protection  
2 Corporation v. Bernard L. Madoff Investment Securities,  
3 LLC. et al  
4  
5 (Cc-4951) Eight Application Of Windels Marx Lane &  
6 Mittendorf, LLP For Allowance Of Interim Compensation For  
7 Services Rendered And Reimbursement Of Actual And Necessary  
8 Expenses Incurred From October 1, 2011 Through January 31,  
9 2012 For Windels Marx Lane & Mittendorf, LLP, Special  
10 Counsel, Period: 10/01/11 To 01/31/2012, Fee:  
11 \$3,203,844.60, Expenses \$24,142.98  
12  
13 (cc-4937) Application Of Eugene F. Collins As Special  
14 Counsel To The Trustee For Allowance Of Interim  
15 Compensation For Services Rendered And Reimbursement Of  
16 Actual And Necessary Expenses Incurred From October 1, 20  
17 II Through January 31,2012 For Eugene F. Collins,  
18 Special Counsel, Period: 10/1/2011 To 1/31/2012,  
19 Fee:\$4724.98, Expenses: \$44.99.  
20  
21 (cc-4938) Application Of Schiltz & Schiltz As Special  
22 Counsel To The Trustee For Allowance Of Interim  
23 Compensation For Services Rendered And Reimbursement Of  
24 Actual And Necessary Expenses Incurred From October I,  
25 2011 Through January 31,2012 For Schiltz & Schiltz,

1 Special Counsel, Period: 10/1/2011 To 1/31/2012,  
2 Fee:\$31324.35, Expenses: \$2821.49.

3  
4 (cc-4939) Application Of Higgs & Johnson (Formerly Higgs  
5 Johnson Truman Bodden & Co.) As Special Counsel To The  
6 Trustee For Allowance Of Interim Compensation For  
7 Services Rendered And Reimbursement Of Actual And  
8 Necessary Expenses Incurred From October I, 2011 Through  
9 January 31,2012 For Higgs Johnson Truman Bodden & Co.,  
10 Special Counsel, Period: 10/1/2011 To 1/31/2012,  
11 Fee:\$74979.00, Expenses: \$2423.24.

12  
13 (cc-4940) Application Of Soroker-Agmon As Special Counsel  
14 To The Trustee For Allowance Of Interim Compensation For  
15 Services Rendered And Reimbursement Of Actual And Necessary  
16 Expenses Incurred From September 20, 20 II Through January  
17 31,2012 For Soroker-Agmon, Special Counsel, Period:  
18 9/20/2011 To 1/3112012, Fee:\$216160.74, Expenses: \$3377.18.

19  
20 (cc-4941) Application Of Graf & Pitkowitz Rechtsanwälte  
21 GMBH As Special Counsel To The Trustee For Allowance Of  
22 Interim Compensation For Services Rendered And  
23 Reimbursement Of Actual And Necessary Expenses Incurred  
24 From October 1, 2011 Through January 31, 2012 For Graf &  
25 Pitkowitz Rechtsanwälte GMBH, Special Counsel, Period:

1 10/1/2011 To 1/31/2012, Fee:\$499110.69, Expenses:  
2 \$16937.56.

3  
4 (cc-4942) Application Of SCA Creque As Special Counsel To  
5 The Trustee For Allowance Of Interim Compensation For  
6 Services Rendered And Reimbursement Of Actual And  
7 Necessary Expenses Incurred From October 1, 2011 Through  
8 January 31, 2012 For SCA Creque, Special Counsel, Period:  
9 10/1/2011 To 1/31/2012, Fee:\$259062.59, Expenses: \$1900.00.

10  
11 (cc-4947) Application Of Attias & Levy As Special Counsel  
12 To The Trustee For Allowance Of Interim Compensation For  
13 Services Rendered And Reimbursement Of Actual And  
14 Necessary Expenses Incurred From October 1, 2011 Through  
15 January 31,2012 For Attias & Levy, Special Counsel,  
16 Period: 10/1/2011 To 1/31/2012, Fee:\$45845.67, Expenses:  
17 \$1104.43.

18  
19 (cc-4943) Application Of Young Conaway Stargatt & Taylor  
20 LLP As Special Counsel To The Trustee For Allowance Of  
21 Interim Compensation For Services Rendered And  
22 Reimbursement Of Actual And Necessary Expenses Incurred  
23 From October 1, 2011 Through January 31,2012 For Young  
24 Conaway Stargatt & Taylor, LLP, Special Counsel, Period:  
25 10/112011 To 113112012, Fee:\$24589.80, Expenses:\$967.27.

1 (cc-4936) Ninth Application Of Trustee And Baker &  
2 Hostetler LLP For Allowance Of Interim Compensation For  
3 Services Rendered And Reimbursement Of Actual And  
4 Necessary Expenses Incurred From October 1, 2011 Through  
5 January 31, 2012 For Baker & Hostetler, L.L.P., Trustee's  
6 Attorney, Period: 10/1/2011 To 11/31/2012, Fee: \$48107863.8,  
7 Expenses: \$866625.44.

8  
9 Seanna Brown 212 589 4230

10 (cc-4944) Application Of Williams, Barristers & Attorneys  
11 As Special Counsel To The Trustee For Allowance Of  
12 Interim Compensation For Services Rendered And  
13 Reimbursement Of Actual And Necessary Expenses Incurred  
14 From October 1, 2011 Through January 31, 2012 For  
15 Williams, Barristers & Attorneys, Special Counsel, Period:  
16 10/1/2011 To 1/31/2012, Fee: \$418955.09, Expenses: \$0.00.

17  
18 (cc-4945) Application Of Taylor Wessing As Special Counsel  
19 To The Trustee For Allowance Of Interim Compensation For  
20 Services Rendered And Reimbursement Of Actual And  
21 Necessary Expenses Incurred From October 1, 2011 Through  
22 January 31, 2012 For Taylor Wessing, Special Counsel,  
23 Period: 10/1/2011 To 1/31/2012, Fee: \$1071518.18, Expenses:  
24 \$529103.58.

1 (cc-4946) Application Of UGGC & Associates As Special  
2 Counsel To The Trustee For Allowance Of Interim  
3 Compensation For Services Rendered And Reimbursement Of  
4 Actual And Necessary Expenses Incurred From October 1,  
5 2011 Through January 31,2012 For UGGC & Associes, Special  
6 Counsel, Period: 10/1/2011 To 1/31/2012, Fee:\$63850.89,  
7 Expenses: \$799.49.

8  
9 (cc-4948) Application Of Werder Vigano As Special Counsel  
10 To The Trustee For Allowance Of Interim Compensation For  
11 Services Rendered And Reimbursement Of Actual And  
12 Necessary Expenses Incurred From October 1, 2011 Through  
13 January 31, 2012 For Werder Vigano, Special Counsel,  
14 Period: 10/1/2011 To 1/31/2012, Fee:\$1744.96, Expenses:  
15 \$0.00.

16  
17 (cc-4949) Application Of Greenfield Stein & Senior, LLP As  
18 Special Counsel To The Trustee For Allowance Of Interim  
19 Compensation For Services Rendered And Reimbursement Of  
20 Actual And Necessary Expenses Incurred From October 1,  
21 2011 Through January 31,2012 For Greenfield Stein &  
22 Senior, LLP, Special Counsel, Period: 10/1/2011 To  
23 1/31/2012, Fee:\$25051.56, Expenses: \$631.85.

(cc-4950) Application Of Browne Jacobson, LLP As Special  
Counsel To The Trustee For Allowance Of Interim  
Compensation For Services Rendered And Reimbursement Of  
Actual And Necessary Expenses Incurred From October 27,  
2011 Through January 31, 2012 For Browne Jacobson, LLP,  
Special Counsel, Period: 10/1/2011 To 1/31/2012, Fee:  
\$15780.46, Expenses: \$2703.59.

(cc-4920) Motion For Order Scheduling Hearing On Trustees  
Motion Affirming Denial Of Time-Based Damages Adjustment To  
Customer Claims.  
David Sheehan 212-589-4200

Adj From 8/9/2012; Adj From 8/23/12; Adj From 8/29/2012  
Stricken - Rescheduled Adj. To 9/5/2012

Transcribed by: Lee M. Sapp

1 A P P E A R A N C E S :

2 BAKER HOSTETLER

3 Attorneys for Trustee

4 45 Rockefeller Plaza

5 New York, New York 10111

6

7 BY: DAVID SHEEHAN, ESQ.

8

9 Securities Inv. Protection Corporation

TH

10 805 15 St., NW., Suite 800

11 Washington, D.C. 20005-2215

12

13 BY: KEVIN BELL, ESQ.

14

15

16

17

18

19

20

21

22

23

24

25



1 P R O C E E D I N G S

2 MR. SHEEHAN: Morning, Your Honor.

3 THE COURT: Good morning.

4 MR. SHEEHAN: I think the -- the only matter on  
5 Your Honor's calendar today are a number of applications for  
6 interim allowance of fees and expenses in the Madoff matter  
7 if I'm correct. And I'd like to just to dive right into  
8 those if I could.

9 THE COURT: Sure.

10 MR. SHEEHAN: I should note for the record --

11 THE COURT: This matter always draws a lot of media  
12 attention outside the courtroom but --

13 MR. SHEEHAN: I know.

14 THE COURT: -- inside the courtroom --

15 MR. SHEEHAN: I guess they must be all in that  
16 other courtroom you know with the TV cameras or something I  
17 don't know.

18 THE COURT: Well they're also working over there to  
19 ratchet up a lot of fees as well.

20 MR. SHEEHAN: For the record, Your Honor, I'd just  
21 like to go through each of these applications and I know I  
22 should as I was going to say no for the record. There is no  
23 objection that's been filed to any of the fee application  
24 before Your Honor this morning including that of Baker  
25 Hostetler matter.

1 As Your Honor well knows this is an extraordinary  
2 proceeding involving jurisdictions throughout the world.  
3 And we have retained counsel to assist the trustee in those  
4 endeavors and I'd just like to quickly survey them and in  
5 effect report to Your Honor orally at least in general about  
6 what those folks are doing and why they were engaged. And  
7 some of them have been long standing such as the first which  
8 is Mr. Collins of Ireland. As you know very early on we  
9 were trying -- trying to chase the money as it were for a  
10 variety of different feeder funds. The Thema Fund was a  
11 very major fund located in Ireland that had been fed by  
12 several of the other funds. We retained counsel to monitor  
13 those proceedings. Made the decision early not to appear  
14 there and have continued with that approach to date. So  
15 therefore the time there is relatively minimum, it's only  
16 twenty two hours but in essence it's to monitor what was  
17 going on there and keep an eye on it. Our interest are not  
18 really imperiled by not proceeding there because the monies  
19 that we're looking for from the other funds such as King  
20 Gate are more accurately located in BBI and Bermuda where  
21 we're very, very active and in London as well.

22 The other -- next firm is from Luxemburg, Schiltz  
23 & Schiltz. The Trustee interestingly enough has been sued  
24 in Luxemburg by a number of the investors who are obviously  
25 dissatisfied with the outcome of Madoff. Along with I

1 should note hundreds of other folks that have been sued as  
2 well. We are responding to that. Shiltz is handling that  
3 matter. We don't see it as a serious matter or a  
4 substantive matter but he has been sued there. Question is  
5 whether or not we quite frankly bring it before Your Honor  
6 and say you can't be sued you can only be sued here. Right  
7 now we haven't decided to do that nor is there any urgency  
8 for us to bring that before Your Honor.

9 The next is Higgs & Johnson that's the Cayman  
10 Islands. There's two matters there. Harley is one of the  
11 more interesting sort of impacts as some of the other things  
12 that we're probably going to discuss next week. Harley made  
13 a decision not to file a claim. And obviously it was a  
14 conscious decision. They had over a five hundred million  
15 dollar (\$500m) claim when they made it but we had a billion  
16 dollar (\$1b) fraudulent transfer claim against them. So  
17 they decided to avoid the jurisdiction probably on the basis  
18 that it was highly unlikely the trustee here was going to  
19 collect any money so why bother to file.

20 Since then we've been actively engaged with them.  
21 They're talking to us. When you start to add nine (\$9b) to  
22 eleven billion (\$11b) dollars to distribute people get  
23 interested in perhaps having a claim. So now they're  
24 talking to us about that. That's going to be a long drawn  
25 out affair. We have a statutory bar date. We have a lot of

1 hurdles to overcome there. I don't think that's going to  
2 happen and there's no real money on the table as yet but as  
3 a result we have activity going back and forth with the  
4 Cayman Islands and what's occurring there because there is  
5 ongoing litigation there. There is a liquidator appointed a  
6 fiduciary who continues to try to pursue what he can but has  
7 very limited resources. And that's the principle reason  
8 we've been talking is with the idea that if we could come up  
9 with a way that we could honor some of their claim that  
10 would give him the ability to work with us in a  
11 collaborative way to pursue third parties that obviously are  
12 from -- from our perspective obviously responsible for the  
13 monies no longer being with Harley. That -- so that's the  
14 efforts of Higgs and Johnson.

15 Soroker and Agmon one of the more interesting  
16 cases that we have. It's in Israel it involves Magnify as  
17 the source of these funds. Magnify took a hundred and  
18 thirty five million dollars (\$5m) of fictitious profits out  
19 of BLMIS over a course of fifteen to twenty years through a  
20 series of different individuals most of it ended up in the  
21 hands of Yishai Horowitz Association which is a not for  
22 profit organization in Israel. We have filed suit against  
23 Yishai Horowitz's application to wind down and to be able to  
24 close its books. We have frozen that and have actively  
25 cooperated with the Israeli government and they are working

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 with us to pursue that. At the same time there is a  
2 principle individual named Yar Green. We named him in our  
3 litigation here before Your Honor for Magnify and we are  
4 pursuing that as well and have prepared pleadings to pursue  
5 most of the assets that ended up circuitously going through  
6 a variety of different channels and then ending up -- most  
7 of them in Mr. Green's and his relatives hands. To that is  
8 a very active litigation and you can see substantial hours  
9 by the Soroker firm there.  
10  
11 And next is Graf & Pitkowitz  
12  
13 in -- in Austria.  
14  
15 In Austria we have not filed any litigation. What we do  
16  
17 have is active ongoing participation in the criminal  
18  
19 proceedings. As Your Honor knows we have different  
20  
21 procedures here in the United States obviously you're  
22  
23 involvement with the US Attorney's Office has been one of  
24  
25 support and collaboration while we don't participate in  
26  
27 their proceedings obviously.  
28  
29 Well in Europe they have a different approach as  
30  
31 Your Honor is I'm sure well aware. And then in Austria what  
32  
33 we have is a participant -- actually recognized as a  
34  
35 participant in the proceedings. Mr. Picard has as the  
36  
37 Trustee registered as a victim. As a result we can actually  
38  
39 participate in those proceedings we can appear and be  
40  
41 present while witnesses are being interviewed by the  
42  
43 prosecutor. We can actually give the prosecutor questions

1 to ask. We get access to the documents there. This has  
2 been an invaluable resource for us in chasing and finding  
3 the assets that obviously passed through Bank Medici back  
4 Austria and Sonja Kohn as well as other -- Euro Valor and a  
5 number of other feeder funds that she created as part of  
6 this scheme that orbited in Austria. So we have Graf and  
7 Pitkowitz there on a regular basis working with us on those  
8 efforts.

9 SCA Creque is located in BBI. BBI's a very active  
10 forum for us for a number of reasons. One is is that we  
11 have King Gate there. King Gate is a major target for us.  
12 There's over a billion dollars at stake there. The two  
13 individuals are Serretti and Grasso. We've sued them here.  
14 We also filed a provisional lawsuit in London as well in the  
15 United Kingdom because that's where they both reside. They  
16 created quite a -- an artifice here that B -- in BBI we have  
17 counsel helping us with regard to King Gate which is the  
18 actual fund itself. In Bermuda is King Gate Management  
19 Limited both of these entities by the way have liquidators  
20 so we deal with the liquidators so we deal with the  
21 liquidators for both of those. And what we're trying to  
22 work out is a collaborative arrangement with both of those  
23 liquidators. We're closer quite frankly with one than the  
24 other. With the idea that eventually what we'll be able to  
25 do is is to assist them by honoring their claims, work out a

1 financial arrangement. And it's a very difficult  
2 negotiation that we have going on with them. Third party  
3 sources some of this is in the news, Your Honor, has  
4 probably seen it where DBSI has been sued by King Gate  
5 trying to enforce its agreement for eight hundred and twenty  
6 five million dollars (\$825m) with the recent events turning  
7 up the value of the claims that's become even more intense.  
8 And we have participants that are part of that deal. Perry  
9 being sued by you know another entity with regard to they  
10 want a piece of the deal. So what has now happened is as a  
11 result of what we've been able to achieve quite frankly and  
12 the value that the Trustees brought to these claims we have  
13 very interesting litigation taking place between major  
14 financial institutions and hedge funds over what has become  
15 a secondary market in the customer claims associated with  
16 Madoff. And that's actually what's happening here.

17 And a good deal of that will depend upon what  
18 success we do have with regard to King Gate and ultimately  
19 Serretti and Grasso traveling through BBI up to Bermuda and  
20 then eventually into the United Kingdom. And that firm the  
21 Creque Firm has been very, very helpful to us since there's  
22 a lot of act -- active litigation there as Your Honor well  
23 knows from the Fairfield case unfortunately not our  
24 Fairfield case the other Fairfield case.

25 Then we have Bermuda that's -- I don't need to

1 repeat that is again King Gate. The Barristers there assist  
2 us with the King Gate management as I mentioned earlier the  
3 management company for King Gate.

4 Next is Keller -- Taylor Wessing. Taylor Wessing  
5 is probably the most interesting situation for us and one  
6 that Your Honor I think given your chapter fifteen  
7 background will find most interesting. What we've engaged  
8 in there is a cooperative agreement which Your Honor has  
9 approved with Mr. Akers who was appointed liquidator for the  
10 MSIL. That was Mr. Madoff's London operation used by him to  
11 create the impression that trades were taking place in the  
12 European market. Of course we all now know that never  
13 happened.

14 But in any event as a result of those activities  
15 his family was actively involved there Peter and the sons.  
16 He was obviously actively involved. We have all the  
17 directors and Sonja Kohn was a major player in the MSIL  
18 operation. So we have joined in a litigation that's been  
19 instituted by Mr. Akers under a collaboration agreement  
20 where all the funds based principally around two reasons.  
21 One is Mr. Picard is now as Mr. Madoff was in fact the  
22 ninety nine percent owner of MSIL. So since we  
23 substantively consolidated he is the sole share holder in  
24 effect where alternatively he has the largest claim  
25 literally hundreds of millions of dollars that -- of money



1 that round tripped through MSIL and never made it back to  
2 BLMIS.

3 So we are collaborating with the idea that we will  
4 ultimately win that lawsuit and be able to bring back into  
5 the estate through MSIL monies that will ultimately come  
6 here and benefit the BLMIS customers who were obviously  
7 defrauded through this scheme. We've also as I said  
8 instituted there a case against Sonja Kohn. Sonja Kohn as  
9 we've alleged here in the rico action and which is still  
10 pending against her. There were other parties that have  
11 been dismissed in the circuit but we have instituted an  
12 action separately against her there and we brought as Your  
13 Honor is again I'm sure aware a freezing order which allows  
14 us to have a worldwide freeze against all of her assets that  
15 was entered by the court after a full week of hearings in  
16 which we presented evidence through Taylor Wessing with  
17 regard to her activities and which he found very strong  
18 evidence in our favor. That ultimately as you would have in  
19 any injunction setting a very strong likelihood of success.  
20 As a result of that we have as I say worldwide injunction  
21 freezing order against her assets she has had very difficult  
22 time coming forward and being -- we now have a contempt  
23 proceeding against her cause she's failed to identify assets  
24 which we know exists and have brought to the attention of  
25 the court in which she failed to reveal. So this is turning

1 into a collateral fight with her that ultimately may ult --  
2 end up in liability funding against her because of her  
3 failure to perform.

4 And since it is a freezing order, that is  
5 application throughout Europe, we've taking that order and  
6 we've gone to Austria with it, we've gone to Gibraltar with  
7 it. So the firms that I mentioned earlier Graf Pitkowitz  
8 have assisted us with that in Austria. We're also going to  
9 travel with it to Israel where we understand they will also  
10 recognize the validity of the order. So --

11 THE COURT: Have you had any report as to what has  
12 been captured by the freezing orders?

13 MR. SHEEHAN: So far it's about twenty million  
14 pounds (£20,000000), Your Honor. Consisting mostly of  
15 properties that she has in England and bank accounts that  
16 she has in Austria and in Luxemburg. So we've -- and we've  
17 had cooperation again I'll leave out those parts because  
18 they take place on a daily basis. We've had cooperation  
19 with the Luxemburg and Austrian authorities but again using  
20 your local counsel to make that happen.

21 So we're up to twenty million pounds (£20,000000)  
22 it's a start, in this case -- any other case that would  
23 sound like a lot of money. In this case it doesn't but it's  
24 -- it's a start as I said earlier and hopefully it will lead  
25 to eventually a lot more monies down the road.

1           The next firm is the firm that doesn't have a lot  
2   of time, its a hundred and seventy three hours that's the  
3   UGGC Firm that's in France. We don't have any active  
4   litigation in France but there's an ongoing active criminal  
5   investigation there. Again not unlike Austria we are filed  
6   as a participant and again can participate in those  
7   proceedings. We have again as a result of that have had  
8   access to a good deal of documentation and its part of our  
9   overall investigation.

10           Gibraltar I mentioned it earlier. This is a case  
11   that early on was before Your Honor that's the Vysya matter.  
12   That eventually perhaps will be tried here at some point.  
13   And as you'll recall we initially very early on found  
14   seventy five million dollars (\$75m) sitting there. We've  
15   been able to bring most of it back here. It's now deposited  
16   with this court. And eventually will be dealt with here.  
17   We also again are pursuing the freezing order against Sonja  
18   Kohn and her related active -- related entities in Gibraltar  
19   so that firm is assisting us there.

20           Next is Switzerland. There's very little going on  
21   there as you can see from the hours only a 3.6 hours. Again  
22   that's -- Sonja Kohn resides there. We keep an eye on that  
23   through an investigator. And we had monitoring of court  
24   proceedings there but it's been very little activity. She's  
25   very quiet in Switzerland.

1           Then the next one is in a firm -- well we actually  
2     have a firm -- two other firms that we've hired that are not  
3     if you will foreign firms. Well one's foreign, I shouldn't  
4     say that. The other foreign firm that we have hired is  
5     Brown Jacobson as conflict counsel in the United Kingdom.  
6     As Your Honor well knows Taylor Wessing is a major  
7     international law firm as a result on several occasions  
8     we've run into conflict situations so we've hired Brown  
9     Jacobson who come in and assisted us with regard to various  
10    pleadings. They've assisted us with regard to the Rubin  
11    decision and making appearances there where we did ask the  
12    court to permit us to make a filing in connection with the  
13    Rubin appeal. We were permitted to do so and did file an  
14    amicas brief. So we've been active on that front as well.

15           Then the other firm that I would mention is  
16    Greenfield Stein and Senior they are our estate counsel  
17    here. What we have found is is that when we go out to other  
18    jurisdictions, Massachusetts, Florida and others --  
19    unfortunately this case has been a (Unintelligible) standing  
20    at this point and given the nature of some of the individual  
21    claimants there and some of -- and there are defendants who  
22    many -- the avoidance actions their passed on. And we've  
23    needed to get the assistance of State counsel to help us  
24    file claims and to file proper notices and to do the things  
25    that are necessary to preserve the trustees causes of action

1 and that's what Greenfield has been assisting us with.

2 Then there is two other firms before I get to

3 Baker, Your Honor, your very familiar with both of them.

4 One is of course Windels Marx who has been with us almost

5 throughout the course of these proceedings. I need not

6 repeat the history Your Honor's very well familiar with it.

7 And Mr. Nistle (Phonetic) since appointment as trustee and

8 he continues in that capacity and we've utilized that very

9 well with regard to actions that he has brought in

10 connection with as Your Honor knows the Madoff Corporations

11 a lot of money we've alleged came out of BLMIS and purchased

12 interest in a variety of different corporations such as

13 Madoff Energy, Madoff Family and a number of others. And we

14 have pursued those and Windels Marx has been very active,

15 done a very excellent job pursing those as well as handling

16 some of the other insider litigation that we -- we had a

17 conflict with. We also had an issue with Bank of New York,

18 they handled that issue for us as well. Across the board

19 obviously a very, very, very fine job.

20 And then last but not least is Young Conaway and

21 that's because Windels incredibly enough you know so I have

22 conflicts in a case of this size and magnitude. So on

23 occasion we've had to look to Young Conaway to assist us and

24 they have done the same as Windels, they've been first rate

25 in terms of their support and everything that we've done.

1           So that in a very brief and summary way, Your  
2           Honor, is to support that we've received without mentioning  
3           what Baker has done over the last reporting period which is  
4           from September through January of last year into January of  
5           this year. And I would ask Your Honor in light of the fact  
6           that there is no objection and what the trustee submits is  
7           very valuable services of all these law firms in achieving  
8           the results that the trustee has achieved that they be  
9           approved.

10           THE COURT: Does anyone want to be heard?

11           MR. BELL: Your Honor, Kevin Bell on behalf of the  
12           Securities Investor Protection Corporation SIPC supports the  
13           entry of an order approving of all of the fee applications  
14           mentioned by Mr. Sheehan so far.

15           THE COURT: Is there anyone else? Thank you all.  
16           Interestingly the courts role is kind of curved in  
17           connection with these fees. There are what informs the  
18           court's position concerning these applications is a pair of  
19           bookends in the statute on one side. And both they're almost  
20           identical. On one side of the statute it says the court  
21           shall approve. On the other side of the bookend the court  
22           must approve. And so those bookends inform the court's  
23           position and three requirements have been made. And in this  
24           case all three requirements have been made. Number one that  
25           the fees are paid and not out of the estate at all are not

1 paid by SIPC itself so none of the customers or victims here  
2 are affected by the application.

3 Second there is no reasonable expectation of  
4 recovery of these fees which would ultimately go back to  
5 SIPC if there was that expectation. And the third that SIPC  
6 itself recommends approval of the fees so the court's  
7 position based upon an act of Congress back in 1978 is that  
8 the court actually must approve the -- the fees.

9 However in connection with the fee requests so far  
10 here today it should be recognized that we're dealing with  
11 what we all believe is the largest fraudulent Ponzi scheme  
12 in history. And it also given the litigious state of our  
13 legal system maybe the most litigated estate in -- in  
14 history which raise thousands of or hundreds if not  
15 thousands of adversaries against the trustee on one side and  
16 some very talented litigating opposition on the other side.  
17 So that one can expect that the fees involved in this form  
18 of litigation can be rather large.

19 Also interestingly as large as the fraud has been  
20 to date with the exception of what hold back there is there  
21 has been an enormous amount of recovery that's been achieved  
22 on the part of the trustee and counsel which is measured in  
23 many, many, many billions of dollars. And we can witness  
24 the distribution that's been approved of at least two point  
25 four billion dollars (\$2.4b) last week. So given all of

1 those circumstances the court's evaluation of the fee  
2 request is somewhat joined or somewhat joins the position of  
3 SIPC in recommending approval. Which I do approve and I'll  
4 entertain an order in that regard.

5 MR. SHEEHAN: All right thank you, Your Honor.  
6 Your Honor, just -- just before I do I do have the order  
7 here and I will hand it up in a moment. What I didn't move  
8 but which I can but in light of your -- Your Honor's  
9 comments I was going to go through a recitation of the work  
10 that Baker Hostetler's done over the last reporting period.  
11 But Your Honor has intimate familiarity with it and if  
12 there's anyone in the world who knows what we've been doing  
13 it's certainly you in terms of the motions to withdraw the  
14 reference and what's already there --

15 THE COURT: There's another Judge in the district  
16 court who should be here.

17 MR. SHEEHAN: There is a certain Judge in the  
18 district court who has another intimate familiarity but I  
19 think he knows exactly what he's doing as well so you're  
20 familiar with our motions to withdraw the reference, the  
21 motions to dismiss, the various litigation activity before  
22 Your Honor. The enormous discovery efforts that we're  
23 engaging in and thank -- by the way I have -- very happy to  
24 report that working with the binding arbitrator has been a  
25 wonderful thing for all of us. I think it's moving the



1 cases forward. We're getting work done which is very, very  
2 helpful to all sides. And Judge Signowski's (Phonetic) done  
3 as you would expect a first rate job. So all of that is in  
4 our reports. You know that we have active litigation with  
5 Mr. Merkin and the Maxim case. During the reporting period  
6 very active in the Katz Wilpon situation which is heavily  
7 reported in that time frame. So I could go through in a  
8 greater detailed but I know Your Honor's familiar with it  
9 and given Your Honor's earlier comments I would simply move  
10 that the Baker Application also be approved.

11 THE COURT: The application is granted.

12 MR. SHEEHAN: All right. Your Honor, if I may I'd  
13 like to hand up the order?

14 THE COURT: Sure. I've approved the order.

15 MR. SHEEHAN: Thank you very much, Your Honor. I  
16 think we're done for the day.

17 THE COURT: Thank you all.

18 MR. SHEEHAN: Thank you.

19 MR. BELL: Thank you, Your Honor.

20

21 (Whereupon proceedings concluded at 10:27 a.m.)

22

23

24

25

1	RULINGS		
2		Page	Line
3	Application For Fees And Expenses Approved	23	25
4	Baker Application Granted	25	11
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

C E R T I F I C A T I O N

I, Lee M. Sapp, certify that the foregoing transcript is a true and accurate record of the proceedings.

Lee M  
Sapp

Digitally signed by Lee M  
Sapp  
DN: cn=Lee M Sapp, o, ou,  
email=digital1@veritext.com,  
c=US  
Date: 2012.08.30 16:15:33  
-04'00'

AAERT Certified Electronic Transcriber CET\*\*D-596

Veritext

200 Old Country Road

Suite 580

Mineola, NY 11501

Date: August 30, 2012